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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,256	01/11/2002	Gurbe Jelle Mesu	1669C	7887

7590  
James D. Ryndak  
RYNDAK & SURI  
30 N. LaSalle Street  
Chicago, IL 60602

11/17/2004

EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/044,256

Applicant(s)

MESU ET AL.

Examiner

Arthur L Corbin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2004 and 18 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-17 is/are rejected.
- 7) ☒ Claim(s) 9,17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 18, 2004 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 5 and 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al.

Applicant is referred to paragraph No. 3, Paper No. 040704. Further, finding the optimum sugar content would require nothing more than routine experimentation by one reasonably skilled in this art. Although applicant attempts to limit the claims by reciting "consisting essentially of", this limitation is only present in claims 1-3 and 5-11.

However, this limitation does not avoid the teachings of Cook et al since applicant's claims do not preclude addition of other ingredients by merely limiting the binder components. Thus, it cannot be determined, once all the ingredients are mixed, exactly what components constitute the binder. Applicant's final mixture is not patentably distinct from that of Cook et al. Additionally, the sugar content claimed by applicant is

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by weight of the binder whereas the sugar content disclosed in Cook et al is by weight of the entire mix. Thus, applicant's and Cook et al's sugar percents cannot be compared.

4. Claims 6, 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al as applied to claims 1-3, 5 and 8-16 above, and further in view of La Baw et al.

Applicant is referred to the reasoning set forth in paragraph 4, Paper No. 040704. Further, it would have been obvious to form the food bar in Cook et al by using a cutting step since it is old to prepare granola – type food bars by cutting and then cooling, as evidenced by La Baw et al (col. 7, lines 58-60).

5. Claims 9 and 17 are objected to because of the following informalities: In claim 9, line 5, "where" should be inserted before "said". In claim 17, line 1, "a" should be cancelled and "product" made plural to be consistent with claim 17, last line.

Appropriate correction is required.

6. Applicant's arguments filed June 17 and October 18, 2004 and have been fully considered but they are not persuasive. The mixing which occurs in Cook et al is equivalent to applicant's mixing step since Cook et al's mixing, like applicant's mixing, results in all of the ingredients being combined into a unitary product. The mixing in Cook et al will also occur at an elevated temperature since the sugar component has been heated before mixing with the dry ingredients and will thereby transfer some heat to the dry ingredients during the blending in Cook et al. Further, since "elevated temperature" is a relative term it cannot define over any temperature used in Cook et al.


By virtue of the heating, the sugar component will be in liquid form, like applicant's sugar component, during the blending in Cook et al.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday - Friday from 10:30 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Corbin/af  
November 10, 2004



ARTHUR L. CORBIN  
PRIMARY EXAMINER  
11-15-04